

CHAPTER NO. 284

SENATE BILL NO. 1959

By Crutchfield, McLeary

Substituted for: House Bill No. 2032

By McMillan, Rinks, Eldridge, Baird, Matheny, DuBois

AN ACT to amend Tennessee Code Annotated, Title 67, relative to headquarters projects.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-6-224, is amended by deleting that section in its entirety and by substituting instead the following language:

Section 67-6-224. (a) A taxpayer who establishes a "qualified headquarters facility" in this state shall be eligible for a credit of all state sales or use taxes paid to the state of Tennessee, except tax at the rate of one-half percent (0.5%), on the sales or use of "qualified tangible personal property".

(b) For purposes of this section, the following definitions shall apply:

(1) "Facility" means a building or buildings, either newly constructed, expanded, or remodeled, housing headquarters staff employees and located in a county or metropolitan statistical area in this state. A facility may include parking facilities exclusively for the use of headquarters staff employees and visitors provided, that the parking facilities are built in conjunction with the newly constructed, expanded, or remodeled building or buildings. An expansion of a headquarters facility may be connected to or separate from a headquarters facility or other facilities located in a county or metropolitan statistical area in this state. The facility must be utilized as a headquarters facility for a period of at least ten (10) years beginning from the date of substantial completion;

(2) "Full-time employee job" means a permanent, rather than seasonal or part-time, employment position providing employment as a headquarters staff employee for at least twelve (12) consecutive months to a person for at least thirty-seven and one-half (37.5) hours per week with minimum health care, as described in Title 56, Chapter 7, Part 22;

(3) "Headquarters facility" means a facility in this state that houses the international, national, or regional headquarters of a taxpayer where headquarters staff employees are located and employed and where the primary headquarters related functions and services are performed;

(4) "Headquarters related functions and services" means those functions involving administrative, planning, research and development, marketing, personnel, legal, computer or telecommunications services performed by headquarters staff employees on an international, national, or regional basis. For purposes of this subsection, regional means a geographic area comprised of at least Tennessee and one (1) or more of its contiguous states. "Headquarters related functions and services"

does not include functions involving manufacturing, processing, warehousing, distribution, wholesaling, or operating a call center;

(5) "Headquarters staff employees" means executive, administrative, or professional workers performing headquarters related functions and services. An executive employee is a full-time employee who is primarily engaged in the management of all or part of the enterprise. An administrative employee is a full-time employee who is not primarily involved in manual work and whose work is directly related to management policies or general headquarters operations. A professional employee is an employee whose primary duty is work requiring knowledge of an advanced type in a field of science or learning. This knowledge is characterized by a prolonged course of specialized study;

(6) "Investment period" means that the investment must be made during the period beginning one (1) year prior to the start of the construction, expansion, or remodeling and ending one (1) year after substantial completion of the construction, expansion, or remodeling of the facility. However, in no event shall the investment period exceed six (6) years;

(7) "Minimum investment" means:

(A) A minimum investment by the taxpayer and lessor to the taxpayer of fifty million dollars (\$50,000,000) or more in a building or buildings, either newly constructed, expanded, or remodeled; or

(B) A minimum investment by the taxpayer and the lessor to the taxpayer of twenty million dollars (\$20,000,000) in a building or buildings, either newly constructed, expanded, or remodeled, along with the creation of not less than two hundred (200) new full-time employee jobs created during the investment period with average wages or salaries equal to or greater than two hundred percent (200%) of the average wage in the county or the metropolitan statistical area in which the taxpayer is located, whichever is higher, as reported in the Monthly Labor Report published by the Department of Labor and Workforce Development for the month of January of the year in which such full-time employee jobs are created.

The minimum investment may include, but is not limited to, the purchase price of an existing building, and the cost of building materials, labor, equipment, parking facilities, and landscaping, but shall not include land or inventory;

(8) "New full-time employee job" means full-time headquarters staff employee jobs that are new to the state of Tennessee and, for at least ninety (90) days prior to being filled by the taxpayer, did not exist in Tennessee as a job position of the taxpayer or of another business entity. The new full-time employee jobs must be created and filled within the investment period. An employee in a new full-time employee job may be employed at a temporary location in this state pending completion of construction or renovation work at the qualified headquarters facility;

(9) "Qualified headquarters facility" means a headquarters facility where the taxpayer has made the minimum investment during the investment period;

(10) "Qualified tangible personal property" means building materials, machinery, and equipment used exclusively in the qualified headquarters facility and purchased or leased during the investment period. Qualified tangible personal property does not include supplies or repair parts. Qualified tangible personal property does not include any payments with respect to leases of qualifying tangible personal property which extend beyond the investment period. Qualified tangible personal property does not include any materials, machinery, or equipment that replaces tangible personal property that previously generated a credit under this section.

(c) A taxpayer qualifying for this credit must be subject to the taxes imposed by Chapter 4, Parts 20 and 21 of this title or be an insurance company as defined in § 56-1-102(2). The taxpayer shall not be permitted to take advantage of any additional sales tax or other state tax credits, exemptions, or reduced rates which would otherwise be available as a result of the same purchases or minimum investment, except the tax credits provided under §§ 67-4-2109(a), (b), and (c) and 67-4-2009(1) and (4)(A)(ii). A taxpayer qualifying for this reduced rate shall also not be permitted to utilize the credits available to hospital companies under § 67-4-2009.

(d)(1) A taxpayer seeking this credit shall first submit to the Commissioner of Revenue an application to qualify as a headquarters facility together with a plan describing the investment to be made and, if applicable, documentation verifying employment and wage information. In the case of a leased facility, the lessor shall also file an application and plan. The application and plan shall be submitted on forms prescribed by the commissioner and shall demonstrate that the requirements of the law will be met.

(2) After approval of the application and business plan, the commissioner shall issue a letter to the taxpayer stating that the taxpayer has tentatively met the requirements for the credit provided for in this section.

(3) In order to receive the credit, the taxpayer must submit a claim for credit along with documentation as required by the commissioner showing that Tennessee sales or use taxes have been paid to the state on qualified tangible personal property. The taxpayer's claim for credit of sales or use taxes paid to Tennessee may include such taxes paid by the taxpayer, lessor in the case of a leased facility, contractors, and subcontractors on sales or use of qualified tangible personal property. Documentation verifying that the minimum investment requirements have been met shall include, but are not limited to, employment records, invoices, bills of lading, lease agreements, contracts, and all other pertinent records and schedules as required by the commissioner.

(4) The commissioner shall review the claim for credit and notify the taxpayer of the approved tax credit amount and provide direction for taking the credit. The taxpayer may not take the credit until the

commissioner has notified the taxpayer of the amount approved and provided direction to the taxpayer on the proper methodology for taking the credit. The credit may only be taken by the taxpayer establishing the "qualified headquarters facility".

(e) If the minimum investment requirements are not made within the investment period, or the terms of this section are not met, the taxpayer shall be subject to assessment for any sales or use tax, penalty, or interest which would otherwise have been due and for which credit was taken. The statute of limitations shall not begin to run on these assessments until December 31 of the final year of the ten-year period provided for in subsection (b)(1).


(f) Credits under this section shall not reduce the taxes earmarked and allocated to education pursuant to § 67-6-103(c)(1).

SECTION 2. The Commissioner of Economic and Community Development shall make a biennial report to the General Assembly on activities or projects undertaken in accordance with the provisions of Section 67-6-224.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all applications and plans filed on or after January 1, 2003, but shall be null and void and cease to be of effect on December 31, 2006.

PASSED: May 21, 2003


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 4th day of June 2003


PHIL BREDESEN, GOVERNOR